

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DRESSER-RAND COMPANY,)	CASE NO: 4:12-CV-00184
)	
Plaintiff,)	CIVIL
)	
vs.)	Houston, Texas
)	
SCHUTTE & KOERTING)	Monday, April 10, 2017
ACQUISITION COMPANY, ET AL.,)	(1:25 p.m. to 1:59 p.m.)
)	
Defendants.)	

DISCOVERY HEARING

BEFORE THE HONORABLE NANCY K. JOHNSON,
UNITED STATES MAGISTRATE JUDGE

Appearances:	See Next Page
Court Recorder:	Suzanne Guevara
Clerk:	Shannon Jones
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

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Houston, Texas; Monday, April 10, 2017; 1:25 p.m.

(Call to Order)

THE COURT: All right. Good afternoon, everyone.
Please be seated.

(All parties resumed their seats)

THE COURT: All right. We're here in *Dresser-Rand*
versus S&K. Who's here for Dresser Rand?

MS. GODSEY: Your Honor, Jamie Godsey on behalf of
Dresser-Rand, with Jonathan Pierce and Kyle Reeb.

THE COURT: Say your name again. Jamie?

MS. GODSEY: Jamie Godsey.

THE COURT: How did you miss not being on the docket
sheet?

MS. GODSEY: I'm not sure, Your Honor. Usually I'm
at the -- on the signature block --

THE COURT: Yeah. Okay.

MS. GODSEY: -- problem is.

THE CLERK: I have, Your Honor, --

THE COURT: Okay. Well, we'll have to get that on
there. Who else?

MR. PIERCE: Jonathan Pierce, Your Honor.

THE COURT: Mr. Pierce. I see you. Yes.

MR. REEB: Kyle Reeb, Your Honor.

THE COURT: Yeah. All right. Good.

And for S&K?

1 **MR. GOLINKIN:** Your Honor, Joseph Golinkin, Greg
2 Porter, Connell Hess are here for S&K.

3 **THE COURT:** All right.

4 **MR. GOLINKIN:** And this is --

5 **MR. ANDERSON:** David Anderson, Your Honor, for the
6 Individual Defendants.

7 **THE COURT:** All right. So, Ms. Godsey, will you be
8 making the argument for Plaintiff?

9 **MS. GODSEY:** I will, Your Honor.

10 **THE COURT:** So explain to me how you are going to try
11 this case without disclosing what the trade secret is.

12 **MS. GODSEY:** Your Honor, it's Dresser-Rand's position
13 that we have disclosed what the trade secret is to all of --
14 all counsel for the Defendants, both the Individual Defendants
15 and S&K, both in our interrogatories and our second amended
16 complaint, as well as through the discovery process and our
17 expert reports.

18 **THE COURT:** So Mr. Pintotzi (phonetic) can't see it?
19 He's just going to be surprised at trial.

20 **MS. GODSEY:** No, Your Honor. They -- the Defendants
21 have seen it. They stole it and they used it. A description
22 of those trade secrets is sufficient to put them on notice as
23 to what those specific trade secrets are, particularly because
24 S&K has produced a number of them back to us because they were
25 in their, you know, their emails.

1 **THE COURT:** So I'm at sea here, obviously. He's --
2 it sounds -- I thought that you were objecting to Mr. Pintotzi
3 having access to this expert report, but apparently you're not.

4 **MS. GODSEY:** No, Your Honor. I apologize if I
5 misspoke -- if I misspoke. We are opposed to Mr. Pintotzi
6 having access to the expert report because the protective order
7 that governs this case, particularly -- specifically precludes
8 the Individual Defendants and the parties from having access to
9 things that are designated highly confidential which expressly
10 includes the trade secret. This is something that is given to
11 the parties or to the counsel for both parties, as well as
12 their experts have full access to it in order to rebut the
13 reports that are at issue.

14 **THE COURT:** So the first time the party will hear
15 what your trade secret is is at trial? Or you're not going to
16 talk about it at trial either.

17 **MS. GODSEY:** No, Your Honor, we will talk about it at
18 trial. Then we have discussed during the party's depositions
19 what some of those trade secrets are and we have disclosed some
20 of those particular trade secrets in the depositions while
21 maintaining the highly confidential status and making it clear
22 throughout the depositions that we were relying on the
23 protective order to maintain the highly confidential status of
24 those documents. We have explained to them what those trade
25 secrets are and, Your Honor, they plugged flash drives into our

1 syst -- to the Dresser-Rand system and pulled -- so downloaded
2 hundreds and thousands of documents and then took those with
3 them, and accessed them, and used them to develop S&K's valves
4 and other parts of their business. They know precisely what it
5 was that they used. There's no question about that. Can't
6 deny knowing what type -- if they pulled the Dresser-Rand name
7 at the top of it and that they took with them from a company
8 they had worked for for decades in some of the cases.

9 **THE COURT:** So I'm still befuddled on why
10 Mr. Pintotzi can't see what you're claiming. I wasn't aware
11 that he was one of the ones who had downloaded.

12 **MS. GODSEY:** Your Honor, he's not one of the ones
13 that downloaded. He is the representative of S&K --

14 **THE COURT:** Yes. Exactly.

15 **MS. GODSEY:** -- for whom the individuals used the
16 Dresser-Rand information to the benefit S&K. He was on some of
17 the emails, as the Individual Defendants were at S&K and
18 emailing him to get price information from Dresser-Rand,
19 certain procedures that they were using. They -- but the
20 primary reason he is precluded from viewing this because he --
21 S&K is a direct competitor of Dresser-Rand and it poses a
22 significant risk of harm to Dresser-Rand's trade secrets,
23 further harm, for him to continue to have further -- additional
24 access to things that were stolen and taken --

25 **THE COURT:** Right.

1 **MS. GODSEY:** -- from Dresser-Rand.

2 **THE COURT:** So, Ms. Godsey, you put off this day for
3 a long time, but it's here now and I've read the pleadings.
4 It's my ruling that these individuals are going to be allowed
5 to know what the trade secrets are.

6 **MS. GODSEY:** Your Honor --

7 **THE COURT:** You're going to trial.

8 **MS. GODSEY:** Absolutely, Your Honor. We don't
9 dispute that they're allowed to know what those trade secrets
10 are, but we contend that they shouldn't be allowed to have
11 access to the documents themselves because not only have they
12 shown a pattern of violating confidentiality agreements, their
13 employment agreements, but also this Court's orders for the
14 past several years that says they were not supposed to continue
15 access in the Dresser-Rand materials. We've got several
16 admissions and several pieces of evidence that, in part, we've
17 included in our motion, showing that they blatantly disregarded
18 those rules and continued accessing them.

19 So Dresser-Rand has no reasonable assurance that if
20 they are shown these documents that they're going to abide by
21 the protective order and not continue to use them to Dresser-
22 Rand's harm -- further competitive harm.

23 And, furthermore, the basis for the Defendant's, as
24 we understand it, desire to show the Defendants these documents
25 is to assist their experts in drafting their rebuttal reports,

1 but they've not articulated any (indiscernible) reason why
2 that's necessary. That's precisely why you hire an expert is
3 to evaluate the comparisons. Dresser-Rand was able to have its
4 expert make a comparison, draft a report, without having access
5 to S & -- without Dresser-Rand clients having access to S&K's
6 highly confidential information. And S&K should be able to do
7 the same exact thing.

8 **THE COURT:** Well I appreciate your argument, but I am
9 going to grant S&K emergency's motion to permit some review of
10 your expert reports. Now you wanted Mr. --

11 **MR. GOLINKIN:** Sorry, Your Honor.

12 **THE COURT:** -- Mr. Pintotzi --

13 **MR. GOLINKIN:** Yes. Yes, Your Honor.

14 **THE COURT:** -- he's your president --

15 **MR. GOLINKIN:** Yes, Your Honor. And the Individual
16 Defendants.

17 **THE COURT:** -- and your -- the Individual Defendants.

18 **MR. GOLINKIN:** Yes, Your Honor.

19 **THE COURT:** Because your experts have already seen
20 them?

21 **MR. GOLINKIN:** The experts have already seen the
22 reports. Yes, Your Honor.

23 **THE COURT:** All right.

24 **MS. GODSEY:** Your Honor, may I ask a clarification
25 question. Your referring specifically to the trade secrets

1 that are disclosed which are contained within Dr. Boise's
2 technical expert report?

3 **THE COURT:** Correct.

4 **MS. GODSEY:** The Defendants are also asking for all
5 of the other expert reports to be viewed by the Defendants and
6 that's particularly concerning with respect to Mr. Van Meter's
7 report, who discusses the damages that are at issue in this
8 case. There are a lot of very, very sensitive financial
9 documents and schedules that are contained within that report
10 that the Defendants have not previously had access to while
11 they worked at Dresser-Rand and that they're -- S&K should not
12 be privy to because there's no need for them to see them in
13 response to our -- in order to assist in responding to our
14 expert report. Their expert is able to do that.

15 **THE COURT:** You're going to trial. They need to know
16 this information. It defies logic to me how you can expect a
17 party to go to trial and not have access to the evidence, only
18 the lawyer. I think that's --

19 **MR. GOLINKIN:** Your Honor --

20 **THE COURT:** -- highly unusual --

21 **MR. GOLINKIN:** -- just if I -- if I may add, just
22 quickly. These documents, the documents in Dr. Boise's report,
23 have been shown to many of these Defendants in their
24 deposition. So it's not like this is something that they've
25 never allowed them to see. We understand their claim at least

1 for taking (indiscernible) --

2 **THE COURT:** Well, you're not going to be allowed to
3 have -- the Individual Defendants are not going to be allowed
4 to take these documents home --

5 **MR. GOLINKIN:** We completely agree, Your Honor.

6 **THE COURT:** -- for homework.

7 **MR. GOLINKIN:** Of course.

8 **THE COURT:** I mean so -- but they can be shown in --
9 you know, in trial preparation.

10 **MR. GOLINKIN:** And that's all we ask, Your Honor.

11 **THE COURT:** But no homework.

12 **MR. GOLINKIN:** No, we completely agree. So just to
13 clarify. So if we were to have, say, Mr. Anderson or
14 Mr. Utain, counsel, present going through what the expert --

15 **THE COURT:** Well, of course --

16 **MR. GOLINKIN:** -- walking through -- I mean that's
17 really all we're after.

18 **THE COURT:** -- of course, you have to mount a
19 defense.

20 **MR. GOLINKIN:** Okay. That's really all we're after.

21 **THE COURT:** But no taking documents home. No
22 personal possession. No downloading or whatever.

23 **MR. GOLINKIN:** Of course.

24 **MR. PIERCE:** Your Honor, may I add something?

25 **THE COURT:** Yes, sir.

1 **MR. PIERCE:** So I just wanted to review Ms. Godsey's
2 concern about that financial documents and we're giving sales
3 data and margin data, customer data, quote data, to our direct
4 competitor.

5 **THE COURT:** You brought this fight, darling.

6 **MR. PIERCE:** I will say in my 20 years I've never
7 given a damages report to the other side that contained my
8 client's proprietary financial data. Never. It never happens.

9 **THE COURT:** Then why is it in the report? I mean --

10 **MR. PIERCE:** Because you have to some compare -- you
11 have to have some profits and (indiscernible)

12 **THE COURT:** Right. So you've chosen to bring this
13 lawsuit.

14 **MR. PIERCE:** And that's why we have a protective
15 order, to shield our company's information from our
16 competitors, who have been stealing it for years. Stealing it
17 for years. They're going to use it against us. We have no
18 other way to --

19 **THE COURT:** I'm sympathetic but you brought the
20 lawsuit. You are seeking the big billions in damages so they
21 have a right to know how you're calculating those damages.

22 **MR. PIERCE:** I agree they can learn the methodology
23 and they can know the end numbers. They should not, under any
24 circumstance, even at trial, have access to our financial
25 information. It should never happen. If that could leave the

1 courtroom, that's the way it goes.

2 **THE COURT:** I have never heard a case tried like
3 that.

4 **MR. PIERCE:** Your Honor, we are --

5 **THE COURT:** Have you? I mean I've never heard a case
6 tried like that, I'm sorry.

7 **MR. PIERCE:** Your Honor, so --

8 **THE COURT:** I haven't.

9 **MR. PIERCE:** -- so what's happened in this case is
10 they stole hundreds of thousands of documents. In order to
11 address that theft, our client has to show our direct
12 competitor all of our financial information?

13 **THE COURT:** Yes. I mean --

14 **MR. PIERCE:** That does not --

15 **THE COURT:** -- I mean if you have -- that's the basis
16 for your calculation.

17 **MR. PIERCE:** Well, then I would ask for your,
18 respectfully, Your Honor, I understand where you're coming
19 from, I would ask that they not immediately turn over the
20 Mr. Van Meter's report. We're going to have to take some other
21 action, I think. We're going to have to do something else. I
22 don't think our client can do that.

23 **THE COURT:** So if you want a stay of my ruling,
24 you'll need to get that from Judge Miller and quickly.

25 **MR. PIERCE:** Is tomorrow quickly enough?

1 **THE COURT:** Well, I will -- I -- you can -- you're
2 going to file a motion tomorrow?

3 **MR. PIERCE:** We'll have to see. Your Honor tells us
4 it has to be filed. It obviously --

5 **THE COURT:** You have to file it because my order is
6 effective as I'm saying it. So --

7 **MR. PIERCE:** There has to be some way that we can
8 challenge, respectfully, Your Honor's order on this. This
9 is -- this is a hugely critical point. Our direct competitor
10 is going to get our financial information. It's simply unfair.
11 They stole our stuff --

12 **THE COURT:** I totally hear you --

13 **MR. PIERCE:** -- and now we're put in this
14 situation --

15 **THE COURT:** -- on that and, yes, I appreciate it's
16 frustrating and maybe the jury will punish them, but damages
17 have to be calculated on evidence and if you have to turn over
18 that evidence to get damages, then that is a decision you've
19 made by filing this lawsuit. So --

20 **MR. PIERCE:** Our expert calculated our damages using
21 their financial information and not a single person at Dresser-
22 Rand even sniffed their financial information. Can Dresser-
23 Rand get access to their financial information then under your
24 order?

25 **THE COURT:** We're not redoing discovery because I

1 made a ruling on this.

2 **MR. PIERCE:** No, but I'm saying if they're going to
3 provide rebuttal reports and so, in theory, if their principals
4 have access to our reports, our principals --

5 **THE COURT:** I think the Rules allow access to
6 underlying data.

7 **MR. GOLINKIN:** We would agree with that, Your Honor,
8 of course.

9 **MR. PIERCE:** Subject to orders of the case. There's
10 a protective order which precludes their individuals from
11 seeing those documents. Judge Miller issued the order that
12 says they can't see it.

13 **MS. GODSEY:** Particularly (indiscernible) Texas trade
14 secrets --

15 **THE COURT:** Well --

16 **MS. GODSEY:** -- cases, it's not uncommon for cases
17 that have protective orders to specifically preclude individual
18 parties from having access to the information. And we cited
19 two cases in our briefing, Your Honor, one from the Texas
20 Supreme Court and the other from the Southern District of Texas
21 where that was at issue. In the Texas Supreme Court case they
22 specifically prevented the company Defendant's 30(b)(6) or
23 corporate representatives from being present in the courtroom
24 during that -- during the presentation of evidence for this
25 exact reason.

1 **MR. GOLINKIN:** Am I to understand, just I want to
2 make sure I am clear, are you suggesting that you would have
3 the Court exclude Individual Defendants to this lawsuit from
4 the Courtroom during testimony at trial?

5 **MR. PIERCE:** If we don't --

6 **THE COURT:** Is that right? Yes.

7 **MR. PIERCE:** (Indiscernible) plans --

8 **THE COURT:** Of course --

9 **MR. GOLINKIN:** Currently, that is -- that's what I'm
10 trying --

11 **MR. PIERCE:** Yes, and I think it's fair. His clients
12 stole our stuff --

13 **THE COURT:** All right --

14 **MR. PIERCE:** -- and now we're being (indiscernible)

15 **THE COURT:** Well, that's definitely something you're
16 going to have to take up with the big guy because, you know,
17 that is way above my pay grade on who gets to be in the
18 Courtroom -- you know, I've tried secret cases and the
19 Courtroom was empty but the parties were all in the well of the
20 Courtroom and the parties heard everything. The public was
21 excluded, not anyone -- you know, not the parties. And so, I'm
22 just not familiar with it. I think it's highly unusual but --
23 and it's Judge Miller's protective order -- but I've seen a lot
24 of these protective orders. This just seems -- your position
25 seems extreme to me. It just does.

1 **MR. GOLINKIN:** Just to clarify one thing. We're not
2 seeking a whole set of E designation of their --

3 **THE COURT:** I --

4 **MR. GOLINKIN:** -- we're just seeking -- okay. As
5 long as -- I just wanted to make sure that (indiscernible) --

6 **THE COURT:** And I will write in my Minute entry, you
7 know, Mr. -- the representative of S&K, Mr. Pintotzi, and the
8 Individual Defendants we'll allow to have access to these
9 documents with, you know, for attorney prep with their
10 attorneys present.

11 **MR. GOLINKIN:** That's fair. Very fair, Your Honor.

12 **THE COURT:** No taking anything home, no copies in a
13 briefcase --

14 **MR. GOLINKIN:** Absolutely.

15 **THE COURT:** -- and --

16 **MR. GOLINKIN:** Absolutely understood.

17 **THE COURT:** -- and as to the financial information,
18 it's the same thing.

19 **MR. GOLINKIN:** Absolutely.

20 **THE COURT:** But they've got to know where, you know,
21 they're parties in this lawsuit. So, as to -- that will be my
22 order. If you want to appeal, you need to get that on file.

23 **MR. PIERCE:** Your Honor, if I may --

24 **MR. REEB:** And just one point for clarity and that we
25 may try to take some further action here. But if that's your

1 order, at least with respect to their folks and they can have a
2 corporate representative looking at our report, is it also then
3 your respective order that we can designate one of our
4 corporate representatives to look at both our reports because
5 the Dr. Boise report, which is the engineering report, that
6 compares and talks about the trade secrets, we had our expert
7 wholly write that report based on comparisons of the Dresser-
8 Rand technical materials to the S&K technical materials and S&K
9 had designated all of their technical materials highly
10 confidential. Now, if they're going to be allowed to have the
11 Individual Defendants, as well as a corporate representative to
12 look at our report in order to make a rebuttal report, I think
13 in the interest of fairness we should be able to have a
14 corporate representative on our side to both look at our
15 report, as well as their rebuttal report, so that we can
16 prepare whatever responses we need.

17 **THE COURT:** Opposed or unopposed?

18 **MR. GOLINKIN:** Just trying to understand. So you're
19 saying that you would like basically the ability for your court
20 representatives to review our expert reports?

21 **MR. REEB:** As well as ours. I mean it --
22 understanding this case because of the protective order that's
23 in place and because they marked all --

24 **THE COURT:** You all wrote the protective order.

25 **MR. REEB:** But -- and what happened with the

1 protective order? We were very happy with the protective
2 order. But because of the protective order that's in place, we
3 were required to have our expert engineer --

4 **THE COURT:** Uh-huh.

5 **MR. REEB:** -- analyze all of their materials --

6 **THE COURT:** Right.

7 **MR. REEB:** -- without input from anyone on our team,
8 right?

9 **MR. GOLINKIN:** Well --

10 **MR. REEB:** On our -- excuse me, sir. On our team.
11 They now are saying that they should not be required to prepare
12 their reports under the same conditions, that their experts
13 should be allowed to prepare their report not only based on
14 their expert's knowledge and their expert's abilities, but also
15 based on input from someone from their team. And so all I'm
16 saying is that if their team's allowed to look at our highly
17 confidential materials contained in the reports, our team
18 should be able to look at their highly confidential materials
19 contained in the reports. It's the only way to keep a level
20 playing field. And what they are in Court here arguing today
21 is that even though we've lived by a highly confidential trade
22 secret engineering documents that shows design specifications,
23 highly confidential, that they should be able to show it to
24 their folks. And I'm saying that if that's what they're going
25 to go with --

1 **THE COURT:** Not their folks. Mr. Pintotzi --

2 **MR. REEB:** Okay.

3 **THE COURT:** And the guys you sued. Not everyone in
4 the company.

5 **MR. REEB:** But we also get to have a corporate
6 representative, correct? And I would like to be able to show
7 our corporate representative their highly confidential
8 drawings.

9 **THE COURT:** Opposed or unopposed?

10 **MR. GOLINKIN:** I think we're opposed, but I don't
11 quite understand why, I guess, is what I'm driving at. They --
12 one of the things -- and it's a little different to be
13 rebutting an expert report. So they're accusing the Individual
14 Defendants and our company of having taken specific trade
15 secrets.

16 **THE COURT:** Right.

17 **MR. GOLINKIN:** And I think there's an important
18 difference between documents and trade secrets. They say that
19 documents were taken and I don't think there's anybody --

20 **THE COURT:** Right.

21 **MR. GOLINKIN:** -- here disputing that. But the trade
22 secrets is information contained therein. Their expert comes
23 in and says hey, here are the trade secrets or the information
24 we believe they took. Here's why we believe they took it. I
25 don't see how the company or the Individual Defendants can

1 possibly respond in a way that's useful for anybody without
2 actually allowing the Individual Defendants, who have knowledge
3 of how they created whatever design they're alleging
4 incorporates a trade secret, without actually having access to
5 that information. So it's pretty imperative in our instance
6 that they be able to review these materials. They are
7 Defendants and parties to the lawsuit.

8 **THE COURT:** Uh-huh.

9 **MR. GOLINKIN:** I'm not sure I follow why it's
10 important -- sorry.

11 **THE COURT:** All right. Mr. Anderson's going to jump
12 in here.

13 **MR. ANDERSON:** I would just ask could we have a
14 little bit of time to confer on this because Mr. Reeb raised
15 this for the first time, and, personally, I'd just like to have
16 an opportunity to talk to him about it. I'm wondering if we
17 could work it out. I think right now everybody's -- frankly,
18 everybody's afraid to agree to something that they're not sure
19 of what they're agreeing to, but I'm -- well, I don't want to
20 say optimistic because every time I say that things go south,
21 but I think we could talk and maybe make some progress.

22 **THE COURT:** So do you want to talk and come back in
23 30 minutes? Do you want to come back in a day or a week? What
24 do you want to -- what do you think?

25 **MR. ANDERSON:** I'll defer that one.

1 **MR. REEB:** I'll say one thing I know. One thing,
2 Your Honor, I think that we're just not going to be able to
3 reach an agreement on and I think that's the financial expert's
4 report. Mr. Van Meter, who has all of our profit margins and
5 sales data in there. I just don't think there's any way we can
6 agree to show --

7 **THE COURT:** Well, how can you -- if you've got profit
8 margins and those are relevant to your damage calculation,
9 aren't you going to be saying that -- what that is to a jury?
10 Our sales margin is this, therefore --

11 **MR. REEB:** Absolutely, Your Honor, but there's
12 precedent in cases like this where a protective order is in
13 place like this, that those who stole the information and who
14 are direct competitors are excused from the room during that
15 testimony and only the jury hears from the experts with respect
16 to what they believe.

17 **MR. PIERCE:** Why do we need -- why they need our
18 financial information, why their principals need our financial
19 information --

20 **THE COURT:** Because if --

21 **MR. PIERCE:** -- is a mystery to me.

22 **THE COURT:** -- you're basing your damage calculation
23 on yours then that's your choice.

24 **MR. GOLINKIN:** It's not important.

25 **THE COURT:** It's a choice. I mean you could have

1 based it on their financial information, too, if you wanted to
2 keep yours secret.

3 **MR. PIERCE:** Well, in fairness, both are in the
4 report. I would have to calculate their profits they --

5 **THE COURT:** Right.

6 **MR. PIERCE:** -- made and the profits that we lost
7 based on our historical profits. There's -- I don't know what
8 they're going to add to their expert report based on our -- how
9 are they going to refute if their individual people that
10 they'll know Dresser-Rand didn't pay \$1.3 million dollars in
11 sales to Elliott in 2010. They have no idea. I don't know
12 what their access to our financial information or how it's
13 going to help their damages expert. It's a -- it's an
14 expedition to learn more valuable information about our client.
15 They've got enough of our valuation valuable information, so
16 they shouldn't be given this.

17 **MR. ANDERSON:** I think I was misconstrued. What I
18 was suggesting is that we can talk to -- you had -- I thought
19 we'd left that topic, the report. We're moving --

20 **MR. GOLINKIN:** Oh, okay.

21 **MR. ANDERSON:** -- we were moving on to the next topic
22 which was Mr. Reeb's suggestion that some of his people be
23 allowed to see, I guess, our expert reports. That's what I'm
24 talking --

25 **THE COURT:** Okay.

1 **MR. ANDERSON:** -- about. And I wasn't really
2 inviting to go back to the salad bar on this -- on this issue
3 of the -- of damage experts.

4 **THE COURT:** Okay. So you're going to appeal my
5 ruling --

6 **MR. REEB:** I --

7 **THE COURT:** -- and you're going to do it quickly.

8 **MR. REEB:** Yeah, Your Honor, I think with all due
9 respect, I think we have to.

10 **THE COURT:** Do you think I care for one minute?

11 **MR. REEB:** No, I was just trying to be respectful.

12 **THE COURT:** No, I mean -- and I, you know, I mean I'm
13 a lawyer. I've got a thick skin. You know, you have to do it.
14 So the point is, do it quickly. Ask for a stay of my ruling
15 and see if he does it.

16 **MR. GOLINKIN:** Your Honor, quickly, just one question
17 about the issue of timing, an extension, in lieu of this
18 ruling. So we spent two weeks attempting to --

19 **THE COURT:** I'm going to give you time. I mean, you
20 know, you're not -- it's not my goal to be, you know, tooling
21 anyone around anymore than I already am. But yeah.

22 **MR. GOLINKIN:** Perfect.

23 **THE COURT:** So the question is how is that going to
24 work? So let's say, let's assume you are going to appeal and
25 you sound like you are kind of asking -- you were asking for

1 June 13th, which sounded awfully generous, but I was more
2 inclined to give you 30 days -- let me just give you 30 days
3 after Judge Miller rules. Is that --

4 **MR. GOLINKIN:** That's completely reasonable. That's
5 completely reasonable.

6 **MR. REEB:** It could impact the remainder of the
7 schedule, Your Honor, in that there is a dispositive motion
8 date. We expect to be making dispositive motions and, you
9 know --

10 **THE COURT:** That'll be bumped back. So let's see.

11 **(Pause)**

12 So I'm going to give you until -- you can file an
13 appeal, what? Today's Monday -- by Thursday? Friday?

14 **MR. PIERCE:** That's -- yes, Your Honor.

15 **THE COURT:** So that's, let's see. So if you file an
16 appeal by -- I'll give you through close of business Good
17 Friday. Then we'll wait for Judge Miller to rule. Thirty days
18 after he rules, your report is due.

19 **MR. GOLINKIN:** Certainly. Certainly.

20 **MR. REEB:** And, Your Honor, we're to understand that
21 they are not to show their folks anything until we hear a
22 ruling from Judge Miller, correct? Just in the way of these
23 expert reports?

24 **MR. ANDERSON:** I was going to ask about that. I
25 thought that your appeal's going to be limited to the financial

1 information. So we could get to work on the technical aspects
2 of the case. If the answer's no, it's no. But that's what I
3 understood.

4 **THE COURT:** Well just, you know, you can get to work
5 if it's just you and your experts. It's bringing your clients
6 in --

7 **MR. REEB:** You'll have 30 days --

8 **MR. GOLINKIN:** We're fine. We're fine.

9 **MR. REEB:** So then your clients --

10 **MR. GOLINKIN:** That restores the status quo.

11 **MR. PIERCE:** That's the question?

12 **MR. GOLINKIN:** That restores the status quo.

13 **MR. ANDERSON:** Yeah, no, because I don't think we
14 have an agreement on anything at this point.

15 **THE COURT:** All right.

16 **MR. ANDERSON:** What we do have is an order that --

17 **THE COURT:** I will order a status quo on that until
18 Judge Miller rules. Then -- so let's say he rules -- you get
19 your report filed. What kind of time lag then was there to the
20 motion for summary judgment?

21 **MR. PIERCE:** It was about a three month lag, Your
22 Honor.

23 **THE COURT:** Three months? Are you kidding?

24 **MR. PIERCE:** Well, I'll say two months -- two months.

25 **MR. REEB:** Well, say two months.

1 **THE COURT:** Three months, my God.

2 **MR. REEB:** And we -- we have --

3 **THE COURT:** This is crazy.

4 **MR. REEB:** -- on this side we consent -- consented to
5 you presiding over all matters here. So if they want to do the
6 same thing and you're happy with less than two months on
7 summary judgment, we can do that.

8 **THE COURT:** I don't know what you've just said.

9 **MR. REEB:** I said if you're willing to hear summary
10 judgment and we've consented to that and you are okay with
11 ruling on that in less than two months --

12 **THE COURT:** Uh-huh.

13 **MR. REEB:** -- we are fine with that time frame, too.

14 **MR. GOLINKIN:** We are fine for her just to keep it
15 status quo as is.

16 **MR. REEB:** So if that would be a reasonable -- I
17 don't know, maybe I'm wrong.

18 **THE COURT:** So right now the case was referred to me,
19 I think, for -- was it a limited referral?

20 **MR. GOLINKIN:** It's all process except for trial and
21 (indiscernible) --

22 **THE COURT:** So it's just a full pretrial.

23 **MR. GOLINKIN:** Yes, Your Honor.

24 **THE COURT:** So, yes. I will be hearing the summary
25 judgments. It will be on a recommendation.

1 **MR. GOLINKIN:** Okay.

2 **THE COURT:** So you don't have to consent on that. I
3 see you filed a consent but that would be to give me the whole
4 case for final judgment purposes for trial.

5 **MR. PIERCE:** That's correct.

6 **MR. REEB:** Yes.

7 **THE COURT:** All right. So where is that schedule?
8 What date was the scheduling order entered? I'm just having a
9 hard time finding --

10 **THE CLERK:** It was on January 18th, Your Honor.

11 **THE COURT:** January 18th --

12 **THE CLERK:** -- (indiscernible) a copy of it.

13 **THE COURT:** -- oh, I see it. Okay. So your
14 dispositive motion was just due one month after discovery
15 ended, which is pretty standard, I think. So if you've got --
16 if you're expert report is due 30 days after Judge Miller
17 rules, discovery ends let's say 45 days thereafter. Is that
18 enough time to get your experts done?

19 **MR. GOLINKIN:** I think that is --

20 **THE COURT:** That seems extremely generous to me.

21 **MR. GOLINKIN:** I think certainly I'm (indiscernible)

22 **THE COURT:** And your motion for summary judgment --
23 how many issues -- who's moving for summary judgment?

24 **MR. GOLINKIN:** I suspect that we will probably --

25 **THE COURT:** The usual suspects?

1 **MR. GOLINKIN:** Yes, Your Honor.

2 **THE COURT:** What issues?

3 **MR. GOLINKIN:** I'm guessing that it's -- I don't want
4 to bind myself, but I think it's going to be a no evidence.

5 **THE COURT:** No evidence?

6 **MR. GOLINKIN:** Yes, Your Honor.

7 **THE COURT:** I'll say your motion for summary judgment
8 is due 21 days thereafter. I'll probably be -- I'm just
9 writing these down. We'll put them in the Minute entry, but
10 once Judge Miller rules, I'll probably -- and, Shannon, help me
11 with my memory, get you a date that actually puts a date on it.
12 Okay?

13 **MR. PIERCE:** Thank you.

14 **MR. REEB:** Thank you.

15 **THE COURT:** All right. Now, you wanted three extra
16 depositions?

17 **MR. GOLINKIN:** Yes, Your Honor.

18 **THE COURT:** Talk to me about that.

19 **MR. GOLINKIN:** So essentially, I think it's --

20 **THE COURT:** I'm going to get my Kleenex here, just in
21 case I need it.

22 **MR. GOLINKIN:** It's -- no, don't worry. It's not a
23 sob story. It's simply they added -- so it's simply they added
24 five additional witnesses. So they have now disclosed nine
25 current or former Dresser employees and four actual

1 (indiscernible). So that brings it to 13. We have a couple of
2 witnesses that we would like to depose as well. So, you know,
3 we're looking at, I don't know, 15 or 16 total potential
4 witnesses --

5 **THE COURT:** So who are these people?

6 **MR. GOLINKIN:** So that remains to be seen, Your
7 Honor. We don't really know. We're figuring it out. The
8 reason we've asked for up to 13 is simply because we don't know
9 when we're going to need to depose them.

10 **THE COURT:** Well so you said that they named like --

11 **MR. GOLINKIN:** They added disclosed -- they amended
12 their disclosures.

13 **THE COURT:** They disclosed. So then you know their
14 names --

15 **MR. GOLINKIN:** So we now know their names and we're
16 figuring out who they are and whether or not -- but we
17 haven't -- so because of our disputes and we're attempting to
18 agree to an exchange of documents --

19 **THE COURT:** Are they former employees or employees?

20 **MR. GOLINKIN:** They are former employees, yes.

21 **THE COURT:** So there's nothing stopping you from
22 calling them up on the phone and saying what do you know?

23 **MR. GOLINKIN:** Your Honor, we are about -- we are in
24 the process of doing that. We just want to make sure we
25 have -- there are some baseline documents we're attempting to

1 negotiate. So really it's not we are going to depose 13
2 people. It's simply at this stage we can't just wait and hope
3 that (indiscernible). We wanted to get it on that record now
4 so that you're aware of the issue. We're not necessarily
5 intending to take 13 depositions and, in fact, we discussed
6 with Mr. Reeb the possibility of basically stipulating to their
7 forensics experts. But when he came back, he came back and
8 said -- that would have knocked out two depositions that we
9 were maybe needing to take. He came back and said well, that's
10 okay, we're open to that but we still might call them at trial.
11 If they're going to call them at trial, I think we probably
12 need to depose them.

13 **MS. GODSEY:** Your Honor, for clarification purposes
14 what he's referring to as our disclosures are simply are
15 initial disclosures, where we're required by the Rules to list
16 anyone who may have knowledge about the facts of the case.
17 They characterized that as our list of who we intend to call at
18 trial, --

19 **THE COURT:** Okay.

20 **MS. GODSEY:** -- which is simply not the case. We've
21 just disclosed, as we would assume they would expect, anyone
22 who might have acc -- or might have knowledge about those
23 facts. We did --

24 **THE COURT:** So who are these people? You added these
25 people recently though?

1 **MS. GODSEY:** Of the list -- three of -- three of the
2 individual -- three of the members are the Individual
3 Defendants, plus Mr. Pintotzi and two other persons for S&K.
4 So six of the people on that list --

5 **THE COURT:** Uh-huh.

6 **MS. GODSEY:** -- are their direct --

7 **THE COURT:** Okay.

8 **MS. GODSEY:** -- witnesses that they can talk to
9 anytime they want. The others are a couple of new current
10 employees that were not on the list previously. They replaced
11 people who used to --

12 **THE COURT:** Okay.

13 **MS. GODSEY:** -- work at Dresser-Rand, as well as an
14 employee who is no longer an employee, but just recently
15 retired and was signed up for this disclosure. They knew he
16 was involved.

17 **MR. REEB:** And there's three folks, a Mr. Bach and a
18 Mr. Garfield, who are IT folks that allowed forensic computer
19 experts to come in and do images. We don't have any -- they
20 know nothing aside from I let someone in to use the computers.
21 We don't intend to call them at trial, but according to our
22 Rule 26 disclosures, these people are referenced as having
23 permitted people, our experts access. So we have to disclose
24 them to them.

25 **THE COURT:** Uh-huh.

1 **MR. REEB:** We've told them we think there's no reason
2 to depose those folks. I don't know if they think there's a
3 reason to depose them. There's an individual by the name of
4 Mike Barber (phonetic) who retired from Dresser-Rand many years
5 ago. We had to list him because he appeared in emails. We
6 have no interest in calling him at trial. We don't think that
7 they've indicated any interest in calling him at trial. I mean
8 there are three folks there that there's just -- they are in
9 the disclosures because they had to be.

10 **THE COURT:** Well, that's fine. I will give you three
11 additional depositions not to exceed two hours.

12 **MR. GOLINKIN:** That will work.

13 **THE COURT:** And call them up on the phone to see if
14 they know anything.

15 **MR. GOLINKIN:** Absolutely. That's --

16 **THE COURT:** You know? Sometimes they do and
17 sometimes they don't.

18 **MR. GOLINKIN:** Thank you, Your Honor.

19 **THE COURT:** All right.

20 **MR. REEB:** Thank you very much, Your Honor.

21 **THE COURT:** You all have a good day.

22 **MR. PIERCE:** Thank you, Your Honor.

23 **THE COURT:** Have a good day.

24 **MR. PIERCE:** You too.

25 **THE COURT:** You all may be excused.

MR. GOLINKIN: Thank you, Your Honor.

(This proceeding was adjourned at 1:59 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

April 12, 2017

TONI HUDSON, TRANSCRIBER